

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



# Th3a

**ADDENDUM**

April 4, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th3a**, COASTAL COMMISSION PERMIT APPLICATION **#5-07-404 (Berger)** FOR THE COMMISSION MEETING OF **April 9-11, 2008**.

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**Correspondence**

Attached is correspondence related to Coastal Commission Permit Application #5-07-404 (Berger), Item Th3a.

Letter dated April 1, 2008 from Mr. and Mrs. Brad Bierbaum, property owners and residents at 408 Avenida La Costa bringing to staff's attention a discrepancy in the application of the structural stringline establishing the proposed addition setback from the Riviera coastal canyon and additionally requesting CDP 5-07-404(Berger), Item Th3a be removed from the April 10, 2008 Commisison consent calendar agenda in order for staff to re-evaluate implementation of the stringline canyon setback for this project.

Letter dated April 3, 2008 from Mr. Brad Bierbaum objecting to staff response to his correspondence from April 1, 2008 and asserting the proposed project will have visual and habitat impacts.

Letter dated April 3, 2008 from Dr. Michael and Lise Telson property owners and residents at 406 Avenida La Costa requesting staff re-examine both the use of the stringline to determine the canyon setback as well as the accuracy of the stringline measurement submitted to the Commission by the applicant. Additionally, the letter requests Item Th3a be removed from the April 10, 2008 Commisison consent calendar agenda in order for staff to re-evaluate implementation of the stringline canyon setback for this project.

Letter dated April 3, 2008 from Ms. June Yoder, property owner and resident at 504 Avenida La Costa with concerns regarding the architecture of the proposed addition and the applied canyon setback. Additionally, Ms. Yoder requests Item Th3a be removed from the April 10, 2008 Commisison consent calendar agenda for a change of venue to Long Beach as Santa Barbara is too far a journey.

Letter from Mr. and Mrs. Eric Jon Berger dated April 4, 2008 explaining the misunderstanding and subsequent immediate correction to the structural stringline and canyon setback.

The three letters received in opposition to the proposed project express two main concerns: 1) the accuracy of the structural stringline and 2) Coastal Commission staff evaluation of the appropriate canyon setback policy for the site.

Staff agrees with the concerned parties that the structural stringline depicted on the submitted site plan is incorrectly drawn. When brought to the attention of the applicant and agent, the applicant submitted revised plans showing the correct stringline and

revised the project to meet the correct stringline resulting in a 4,035 sq. ft. residence, instead of a 4,085 sq. ft. residence. The revised plans are included in the report addendum and replace the incorrect project exhibits. The original staff report makes the assertion that the proposed project meets the structural stringline. The staff report has also been revised to account for the re-submitted revised plans. The proposed addition now meets the correctly applied stringline canyon setback.

Although the use of the structural stringline canyon setback policy would bring the proposed project closer canyonward, the project would not encroach into the canyon itself. No development is proposed for the canyon and the proposed development will neither improve nor disturb existing canyon vegetation. Staff believes the stringline is the appropriate applicable canyon setback based on known site characteristics relative to habitat, geologic hazards, and views of the site from public areas.

Therefore, staff recommends keeping the item on the consent calendar for Commission action at the current April 9-11, 2008 hearing. The Commission has until July 5, 2008, the 180<sup>th</sup> day from the date the application was filed to act on the application. The item has to be acted upon by the Commission at its April or May hearing as the June hearing is cancelled.

## Revision to Staff Report

Commission staff recommends a revision to the language of the project description, on page one of the staff report; numerous changes under the Project Location and Description heading beginning on page 4 of the staff report; and a complete replacement of Exhibit 5 pages 1-4, with the new Exhibit 5 pages 1-7. The new exhibits are attached at the end of the addendum. Deleted language is in ~~strike through~~ and new language is in **bold, underlined italic**, as shown below:

Project Description: Remodel existing single-story single-family residence resulting in a 2-story 4,085 **4,035** sq. ft. residence, 1,140 sq. ft. ground floor deck, 978 sq. ft. roof deck and a 134 sq. ft. addition to an existing 484 sq. ft. garage on an 11,550 sq. ft. canyon lot. The addition requires a new caisson foundation system. No changes to existing landscaping are proposed.

### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

#### **A. PROJECT LOCATION AND DESCRIPTION**

The proposed project involves a remodel of an existing one-story single family residence resulting in a 4,085 **4,035** sq. ft. two-story residence on a canyon lot located 500 Avenida La Costa in the City of San Clemente, Orange County (Exhibits 1 & 2). The 11,550 square-foot lot consists of a generally flat pad on the southwestern side of the lot, which slopes down towards Riviera Canyon in the rear yard. Surrounding development consists of low-density single-family residences. The site is designated as Residential Low (7 dwelling units per acre) in the certified Land Use Plan, and the proposed project is consistent with this designation. The nearest public access to the beach is available at the Riviera access point, approximately 250 yards south of the subject site (Exhibit 4).

The applicant proposes an addition of ~~1,885~~ **1,835** sq. ft. livable space to an existing 2,200 sq. ft. residence resulting in a ~~4,085~~ **4,035** sq. ft. livable space, 1,140 sq. ft. ground floor deck, 978 sq. ft. roof deck and a 134 sq. ft. addition to an existing 484 sq. ft. garage. The addition requires a new caisson foundation system. No additional grading or landscaping is proposed. The existing residence is on a level pad on Avenida La Costa and approximately 35 feet above Riviera Canyon. Construction would involve a major ground floor remodel and new second story game room addition and roof deck facing the southwest (street) side. The majority of the proposed addition would be on the eastern and southeastern sides of the residence (toward the top of canyon and over an existing side yard deck). Non-native vegetation along the southeastern side yard is proposed for removal to accommodate the new side deck addition. Construction of the addition will not result in the loss of any existing native vegetation on the site.

The City's certified LUP (Policy VII.15), to which the Commission may look for guidance, requires new development on coastal canyon lots to be set back as follows:

*"New development shall not encroach into coastal canyons and shall be set back either: a. a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or b. a minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or c. in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures.*

*The development setback shall be established depending on site characteristics."*

The current residence conforms to the canyon setback policies in the certified LUP, as the development is set back a minimum of 30% depth of lot, meets the structural stringline and is also 15 feet from the canyon edge. The proposed addition would encroach closer to the canyon edge by bringing the residence up to approximately 2 **three (3)** feet from the canyon edge at its closest point and approximately 5 **seven (7)** feet and its furthest point. The addition would still meet the LUP stringline canyon setback policy, one of three possible applicable canyon setback policies in the LUP.

**The original plans submitted (and included as the staff report attachments) depict an incorrect stringline on the site plans. The architect inaccurately drew the line from the northerly adjacent property from a post supporting the roof instead of the nearest adjacent corner of enclosed living area, the stringline from the southerly adjacent residence is accurately drawn from the nearest adjacent corner of enclosed living area. This discrepancy was brought to staff's attention after submittal of the staff report. Consequently, the applicant has submitted revised plans showing the correct stringline and revised the project to meet the correct stringline resulting in a 4,035 sq. ft. residence, instead of a 4,085 sq. ft. residence. The revised plans are included in the report addendum. The proposed addition now meets the correctly applied stringline canyon setback.**

The proposed addition is consistent with the pattern of development in the vicinity as the adjacent lots and those along Avenida La Costa are built out close to the canyon edge.

Apr. 01 2008 11:37AM P2/3

Th 3a

**RECEIVED**  
South Coast Region

April 1, 2008

APR 1 2008

Lilian Roman  
Coastal Program Analyst  
Karl Schwing  
Supervisor, Regulation & Planning  
California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

CALIFORNIA  
COASTAL COMMISSION

**RE: ITEM TH3A - APPLICATION NO. 5-07-404 (BERGER, SAN CLEMENTE)**

Dear Ms Roman and Mr. Schwing:

My family lives at 408 Avenida La Costa, immediately adjacent to the proposed remodel of 500 La Costa. We are supportive of our neighbor's right to remodel their home, but do have **strong concerns** about the extent of encroachment into Riviera Canyon under the proposal submitted to the Coastal Commission. First, I reviewed the plans at the City's planning counter, and it appears that the application relies upon a "stringline" that purports to begin at the corner of our residence but in fact begins at a point approximately 9' out from the corner of our house. At a minimum, the Coastal Commission should re-examine the basis of the "stringline" used. I would also suggest you re-examine the accuracy of where the "stringline" ends at the opposite residence as I have been unable to do so.

However, we have looked at prior staff reports for homes along Riviera Canyon as well as the other coastal canyons in San Clemente, and they seem to say that the "stringline" method is sometimes used to **limit** further encroachments into our coastal canyons, but that "stringline" should **not** be employed where it would lead to **greater encroachment of a coastal canyon**. Here the new home would come as close as 2 feet from the canyon's edge when 15 feet seems to be the more common minimum setback. We recognize that some homes built prior to the Coastal Act are built closer than 15 feet from the edge, but that has not been the basis for relief in other recent applications. Indeed, this is what the Coastal Commission's staff report said on this subject for 512 La Costa, just 5 houses down from the current application:

The proposed development conforms to the canyon setback policies in the certified LUP. The new residence will be located a minimum of 35 feet from the canyon edge. The existing brick patio conforms to the Commission's typical 5-foot setback requirement for non-structural, at-grade features on canyon lots and the proposed two new retaining walls along the east and west property lines will also be set back 5 feet from the canyon edge. **A string line setback is not appropriate as it would result in a smaller setback from the canyon.** Therefore, the "not less than 15-feet from the canyon edge" setback is applied. The proposed project has been sufficiently set back to be consistent with the pattern of development in the surrounding area. The project will not result in significant canyonward encroachment. As proposed, the project is sited to preserve scenic resources, as well as protect canyon habitat.

The Coastal Commission's staff reports also seem to say that use of the stringline method is **not appropriate** when the canyon edge meanders, which is certainly the case here. If you look at an aerial photo, the canyon and the street both curve in at this location. The result is that the stringline essentially

FROM :CB RICHARD ELLIS

FAX NO. :7149392281

Apr. 01 2008 11:38AM P3/3

Th3a

Page 2  
April 1, 2008

"cuts the corner" and would allow a building envelope that hugs the canyon edge much closer than the Commission has indicated is most protective of scenic resources and canyon habitat.

Please take this matter off of the April consent calendar so that you can revisit the proper development standard for the canyon side of this development. Please notify me if this is going to be heard by the Commission on April 10, 2008, as I and some of my neighbors will have to arrange travel to Santa Barbara to voice our objections to the Commission directly. Thank you for your attention to this matter.

Sincerely,



Brad and Jan Bierbaum  
408 Avenida La Costa  
San Clemente, CA 92672  
Home: 949-361-1898  
Work: 714-939-2166  
Cell: 714-623-2635

FROM : CB RICHARD ELLIS

FAX NO. : 7149392281

Apr. 03 2008 11:20AM P2/3

Page 1 of 2

**Bierbaum, Brad @ Anaheim**

**From:** Bierbaum, Brad @ Anaheim  
**Sent:** Thursday, April 03, 2008 10:42 AM  
**To:** Iroman@coastal.ca.gov; kschwing@coastal.ca.gov  
**Subject:** FW: Setback - Berger Application, San Clemente, Ca

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South Coast

APR 3 2008

COASTAL

Th3a

I am in receipt of your response to my objection that the Berger Application be removed from the consent calendar. I want you to know (and I want this objection to be placed as an exhibit to the application) that I absolutely disagree that you are still recommending that the "stringline" setback is appropriate for the Berger application, and am objecting completely that the Application stay on the consent calendar for the April 10 hearing.

Regarding the 'Stringline' issue I see the staff's recommendation to the application as setting a new precedent for development along the coastal canyons. Please consider the following:

**West Marquita McNamara Residence** - You mention that the commission did not approve staff recommendation and instead sided with the applicant. However, the applicant was still restricted to not build within 15 Feet of the canyon edge. Staff was attempting to be **MORE** restrictive in this case by using the stringline method to move the setback further back then **15 FEET**. In the Berger case, staff is using the stringline to be **LESS** restrictive....even when there is sufficient area on the lot to apply a 15 Foot Setback. Also, on the McNamara site the configuration on the lot pushed out into the canyon whereas the Berger lot is the inverse configuration. By using the Stringline you are effectively "cutting the Corner" and resetting the stringline for the adjacent lots, potentially enabling further encroachment into the canyon in the future.

The result of the Staff recommendation is that the applicant will be allowed to build closer to the Canyon ( **two (2) FEET**) than any other house on the street...many which were constructed prior to the Coastal act. Other then lots that are effectively 'in' the canyon, has staff recommended approval of ANY new construction within 15 feet of a canyon edge in San Clemente in recent years? Please provide me an answer.

**Visual Impacts** - There is a trail used for beach access that goes through the canyon that ends up at the Alessandro/San Antonio loop which is a public road and sidewalk that has a view down the canyon to the ocean. It is a beautiful setting. This remodel will be highly visible from these public locations and will certainly diminish the visual quality of the canyon

**Biology** - Has a survey of vegetation been submitted to staff? I don't think so. Additionally, Fuel modification is an issue even if the OCFA does not need to specifically review the remodel plans. do you have this information?

Finally, I would like to include an excerpt from a very recent application on the same street (512 La Costa), on the same canyon, which clearly demonstrates that if the staff recommendation for the Berger project persists, then it will be a clear change in past CC philosophy and precedent setting:

"The proposed development conforms to the canyon setback policies in the certified LUP. The new residence will be located a minimum of 35 feet from the canyon edge. The existing brick patio conforms to the Commission's typical 5-foot setback requirement for non-structural, at-grade features on canyon lots and the proposed two new retaining walls along the east and west property lines will also be set back 5 feet from the canyon edge. **A string line setback is not appropriate as it would result in a smaller setback from the canyon.** Therefore, the "not less than 15-feet from the canyon edge" setback is applied. The proposed project has been sufficiently set back to be consistent with the pattern of development in the surrounding area. The project will not result in significant canyonward encroachment. As proposed, the project is sited to preserve scenic resources, as well as protect canyon habitat."

FROM :CB RICHARD ELLIS

FAX NO. :7149392281

Apr. 03 2008 11:21AM P3/3

Page 2 of 2

Th3a

In regard to staying on the Consent Calendar, I do not understand how myself, or my neighbors, will have time to review the revised plans incorporating the new stringline that was corrected after it was determined the original stringline provided to the Coastal Commission was significantly in the wrong place. I thought the reason we received notice from the Coastal Commission of a pending development is to have time to consider and comment on the plan. Since the plan has changed, wouldn't it be prudent to re-notice the neighbors and postpone the hearing to a later date.

Again I respectfully request the Berger application from the Consent Calendar immediately.

Sincerely,

Brad Bierbaum | Senior Vice President  
CB Richard Ellis  
2125 E. Katella Avenue, Suite 100 | Anaheim, CA 92806  
T 714 939 2166 | F 714 939 2281  
[brad.bierbaum@cbre.com](mailto:brad.bierbaum@cbre.com) | [www.cbre.com](http://www.cbre.com)



Th3a

April 3, 2008

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APR 3 2008

CALIFORNIA  
COASTAL COMMISSION

Lilian Roman  
Coastal Program Analyst  
Karl Schwing  
Supervisor, Regulation & Planning  
California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

**RE: ITEM TH3A - APPLICATION NO. 5-07-404 (BERGER, SAN CLEMENTE)**

Dear Ms Roman and Mr. Schwing:

I was very concerned when I opened up your recent Coastal Commission letter, with the information that application No. 5-07-404 stating that the residence of the Bergers located at 500 Avenida La Costa was on the Coastal Commission agenda for approval to remodel a single story reasonably sized home to a very large two story home with two tiers of decks which utilizes practically all of the buildable area.

This proposed change will seriously compromise a cherished California Coastal Canyon, the beauty of a lovely public access trail to the beach and the integrity of many homes, all of whom **unlike** this proposal, have complied with the coastal commission mandates to protect the coastal canyons of this area.

The agenized application referenced above is very dangerous to the future of the beautiful coastal lands that your organization is to protect. We are writing this letter to state in writing our strong objection to the approval of this application. The extent of encroachment into Riviera Canyon under the proposal submitted to the Coastal Commission should not now or ever be permitted

We have lived at 406 Avenida La Costa, for 14 years. We are one house away to the proposed remodel of 500 La Costa. The remodel as proposed will adversely effect the beauty and ecological sustainability of our coast and canyon, our entire neighborhood and in particular those of us who live nearby.

We are supportive, of the right to remodel a home, when following appropriate procedures and adhering to the strict interpretation of the costal commission, law, Home Owner Association approval and of course all permits and building codes.

C:\Documents and Settings\irelson\My Documents\Neighbor.doc:fm

No. 1447 P. 1

APR 4 2008 4:46AM V.P. STUDENT SERVICES



Page 2  
April 3, 2008

Th3a

We have reviewed the plans and note that the application relies upon a "stringline" that purports to begin at the corner of the Bierbaum residence which is 408 Avenida La Costa; but in fact begins at a point substantially further then the corner of that home.

We believe that the Coastal Commission should re-examine both the use of the "stringline" to determine encroachment upon the canyon as well as the basis for the measurement submitted to the Costal Commission. We fear that IF this is approved, the use of stringlines will vary according to the desires of homeowners rather than be strictly adhered to by all in California for the protection of our coastal canyons and coast. Additionally, if this stringline is granted than future stringline measurements for homes will continue to encroach further upon this canyon. Beyond this canyon others will want to do the same and all our canyons would be jeopardized.

We seriously suggest that to insure adherence to coastal commission regulations and accuracy of the stringline measurement (if it is used) for the public that you re-examine the accuracy of where the "stringline" begins and ends in this application.

With neighbors, we have looked at prior staff reports for homes along Riviera Canyon as well as the other coastal canyons in San Clemente. They all point to the fact that the "stringline" method is sometimes used to **limit** further encroachments into our coastal canyons, but that "stringline" should **not** be employed where it would lead to **greater encroachment of a coastal canyon**.

Yet in this case the proposed remodel would come as close to two (2) feet from the canyon's edge. To encroach upon the canyon to this extent when fifteen (15) feet seems to be the more common minimum setback is a dangerous precedence to start and may endanger scenic resources and canyon habitat as well as a beautiful canyon well appreciated by walkers and hikers and the public at large.

We have been informed that some homes built prior to the Coastal Act are built closer than 15 feet from the edge. However, that has not been the basis for relief in other recent applications. In fact, our neighbor at 512 La Costa, just 5 houses down from the current application, **thankfully**, was not permitted for less than 15 feet, (15') by the Coastal Commission.

To quote the Coastal Commission's staff report.

Th 3a

Page 3  
April 3, 2008

*"The proposed development conforms to the canyon setback policies in the certified LUP. The new residence will be located a minimum of 35 feet from the canyon edge. The existing brick patio conforms to the Commission's typical 5-foot setback requirement for non-structural, at-grade features on canyon lots and the proposed two new retaining walls along the east and west property lines will also be set back 5 feet from the canyon edge. A string line setback is not appropriate as it would result in a smaller setback from the canyon. Therefore, the not less than 15-feet from the canyon edge setback is applied. The proposed project has been sufficiently set back to be consistent with the pattern of development in the surrounding area. The project will not result in significant canyonward encroachment. As proposed, the project is sited to preserve scenic resources, as well as protect canyon habitat."*

Thank you! We so appreciate your hard work on the matter stated above and are asking you to continue to uphold your strict standard. The Coastal Commission staff report is cognizant of the fact that the use of the stringline method may not be appropriate and in particular when the canyon edge meanders. This Coastal Canyon meanders significantly as easily evidenced by viewing an aerial photo. The canyon and the street both curve in noticeably, at the very location of this proposed remodel. Thus, allowing any encroachment on the canyon exacerbates an already delicate situation.

In our careful evaluation of this situation, it is clear that the standard set previously by your Commission, of at least a fifteen (15') feet setback, taking into consideration the meandering of the canyon is essential.

The conclusion of the previous study as quoted above insured that that remodel had an appropriate setback beyond what was measured strictly by stringline and that it insured against encroachment due to the effect of the result of the meandering Riviera Canyon. It acknowledged that adherence only to stringline, **(and then only if applied correctly, which is in question)**, essentially results in, cutting the corner, and would allow a building envelope that hugs the canyon edge much closer than the Commission has indicated is most protective of scenic resources and canyon habitat.

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April 3, 2008

Th39

In conclusion, we are asking you to please take this matter off of the April consent calendar so that you can revisit the proper development standard for the canyon side of this development.

Furthermore, please notify us, if this is going to be heard by the Commission on April 10, 2008, as we and some of my neighbors will have to arrange travel to Santa Barbara to voice our objections to the Commission directly.

Thank you for your prompt attention to this matter. We truly appreciate the work of the Coastal Commission.

Please feel free to contact us at any time with questions or information to share. Thank you again for your time and for your efforts to provide for all of us a more beautiful coast and therefore a magnificent state of California.

Sincerely,



Dr. Michael and Lise Telson  
406 Avenida La Costa  
San Clemente, CA 92672

Email work: [ltelson@saddleback.edu](mailto:ltelson@saddleback.edu)  
Email home: [mictel@cox.net](mailto:mictel@cox.net)  
Home: 949-361-6619  
Work: 949-582-4566  
Cell: 949-370-1499

FROM : CB RICHARD ELLIS

FAX NO. : 7149392281

Apr. 03 2008 04:31PM P1

Th3a

April 3, 2008

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South Coast Region

APR 3 2008

CALIFORNIA  
COASTAL COMMISSION

Lilian Roman  
Karl Schwing  
California Coastal Commission  
200 Occangate, Suite 1000  
Long Beach, CA 90802

RE: Application No. 5-07-404 (Berger, San Clemente)

Dear Ms. Roman and Mr. Schwing:

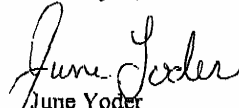
My name is June Yoder. My husband Paul, now deceased, a developer/builder in Whittier area, built our home located at 504 La Costa – two houses south of the Berger residence.

When we built our home, at 504 La Costa, we were restricted from building any closer than 15 ft. from the canyon edge. Both houses on either side of us are 20 – 25 years old. There are 4 homes south of mine with canyon views all of which are setback significantly from the canyon. No new construction in last 20 years. I hope the Coastal Commission honors our canyon and their commitment to keep it healthy.

The area that is of concern to me is honoring our architectural community which was not done by Bergers. This has been a standard in our area which supersedes plans going to City Planning. Mr. Berger has recently moved into his in-laws home at 500 La Costa but as a builder living in SC all of his life should have honored our architectural committee.

I would also request a change of venue to Long Beach. Santa Barbara requires a journey difficult to make. At the very least, please remove this item from the April 10<sup>th</sup> Consent Calendar.

Thank you,

  
June Yoder  
504 La Costa  
San Clemente, CA  
(949) 498-6426

Th 3a

**From the Desk of Eric Jon Berger**  
500 Avenida La Costa, San Clemente, CA 92672

April 4, 2008

**Via Hand Delivery**

Liliana Roman  
200 Ocean Gate, Suite 1000  
Long Beach, CA 90802-4302

**Subject: Coastal Permit Application – 5-07-404**

Dear Liliana:

My wife and I would like to respond to the letter addressed to you dated April 1, 2008 written by Brad and Jan Bierbaum whose address is 408 Avenida La Costa, San Clemente, CA.

Our Architect, Wayne Penny Jr., interpreted the L.U.P. language "Between the nearest corners of the adjacent structures" to mean the structural corner of the house. The Planning Department at the City of San Clemente agreed with his assessment and approved his Proposed Plans on November 7, 2007. When the issue of string line placement was brought up in the above mentioned letter you contacted my Architect and he clarified his position to you. You expressed to him that you understood his reasoning but in the past had used "the nearest corner with living space directly behind it". Immediately upon hearing of your concern I instructed him to re-draw the string line in accordance with your interpretation. This resulted in 3'6" ft. approximate adjustment to the string line, not the 9' the Bierbaums allege.

The Bierbaums also voice concerns regarding the method used to determine the canyon set-back stating that we should have the most restrictive standard imposed on us. In their argument they leave out the critical language "the development set-back shall be established depending on site characteristics". We trust the judgment of the San Clemente Planning staff as well as The Coastal Commission staff in their evaluation of site characteristics in recommending their approvals.

**Liliana Roman**  
April 4, 2008  
Page 2

Th 3a

It also seems very disingenuous to us that they would be using their concern for the canyon in their argument for the most restrictive standards being imposed on our addition while they have a deck that projects in the canyon approximately 25' ft. beyond our proposed building line (see Sheet C1 - Deck string line). Their approximate 1,100 square ft. deck is built out into the canyon with all the surface water running through the deck onto the bare ground below. This sediment runs down the canyon and directly to the ocean. It is also very disingenuous that they would be using The Coastal Commission to restrict our addition while never having bothered to obtain City approval, Building Permits or most importantly Coastal Commission approval of their illegal deck.

My wife and I pray that The Coastal Commission will see the Bierbaum letter for what it really is – a selfish attempt of using The Coastal Commission to preserve their view.

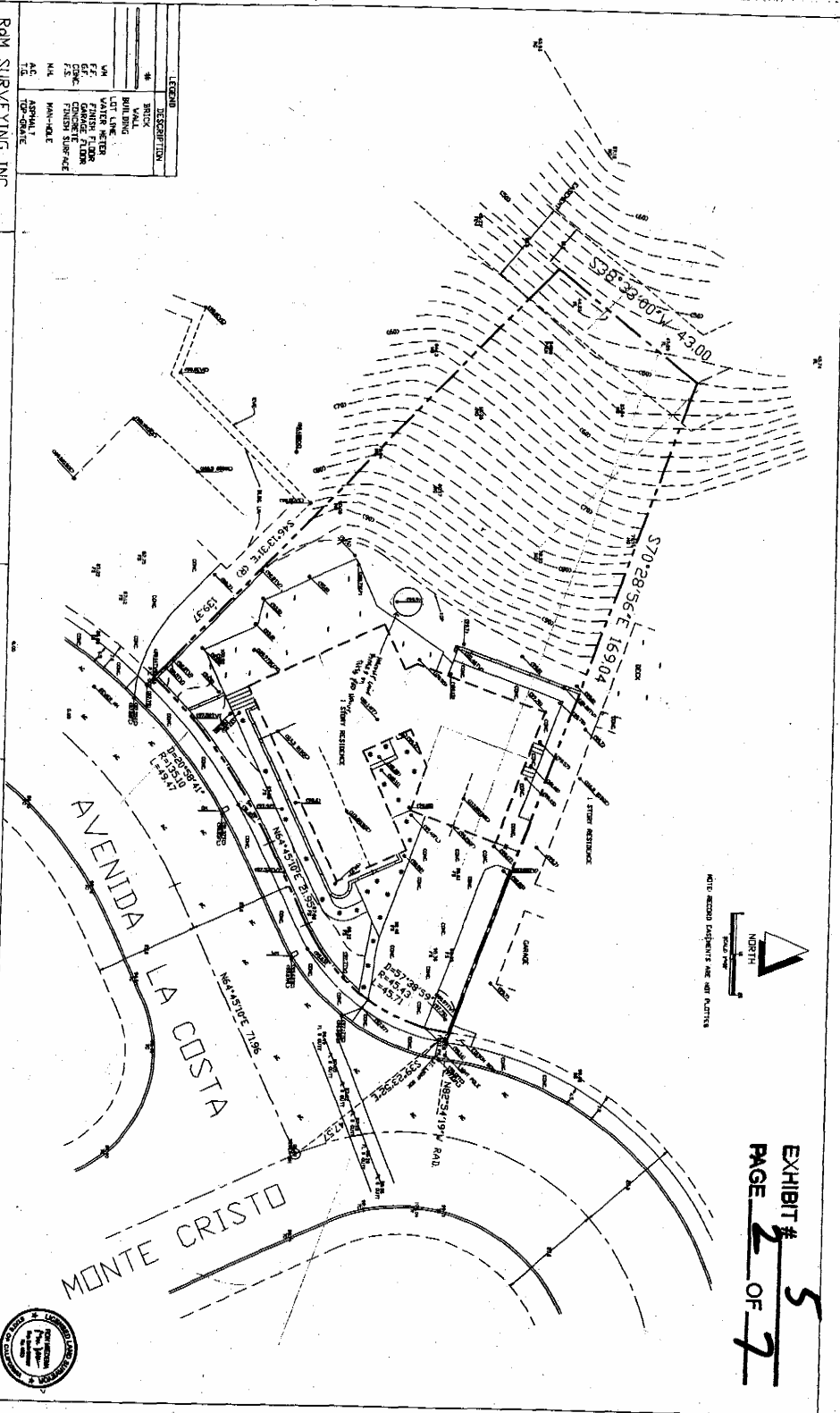
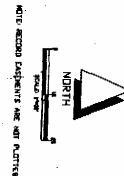
Sincerely,



Eric Jon Berger  
Velva Jane Berger



EXHIBIT # 3  
PAGE 2 OF 7



**RoM SURVEYING INC.**  
 BOB MEZMA, P.E. 4633  
 2201 LAKE FOREST DRIVE #409  
 LAGUNA HILLS, CA 92653  
 (949) 858-2924 OFFICE  
 (949) 858-3438 FAX  
 RDMSURVEYING@COMcast.NET

TOPOGRAPHIC SURVEY

JOB 44-45      DATE 2-11-67

**OWNER:**  
Eric Berger  
508 La Costa  
San Clemente, CA

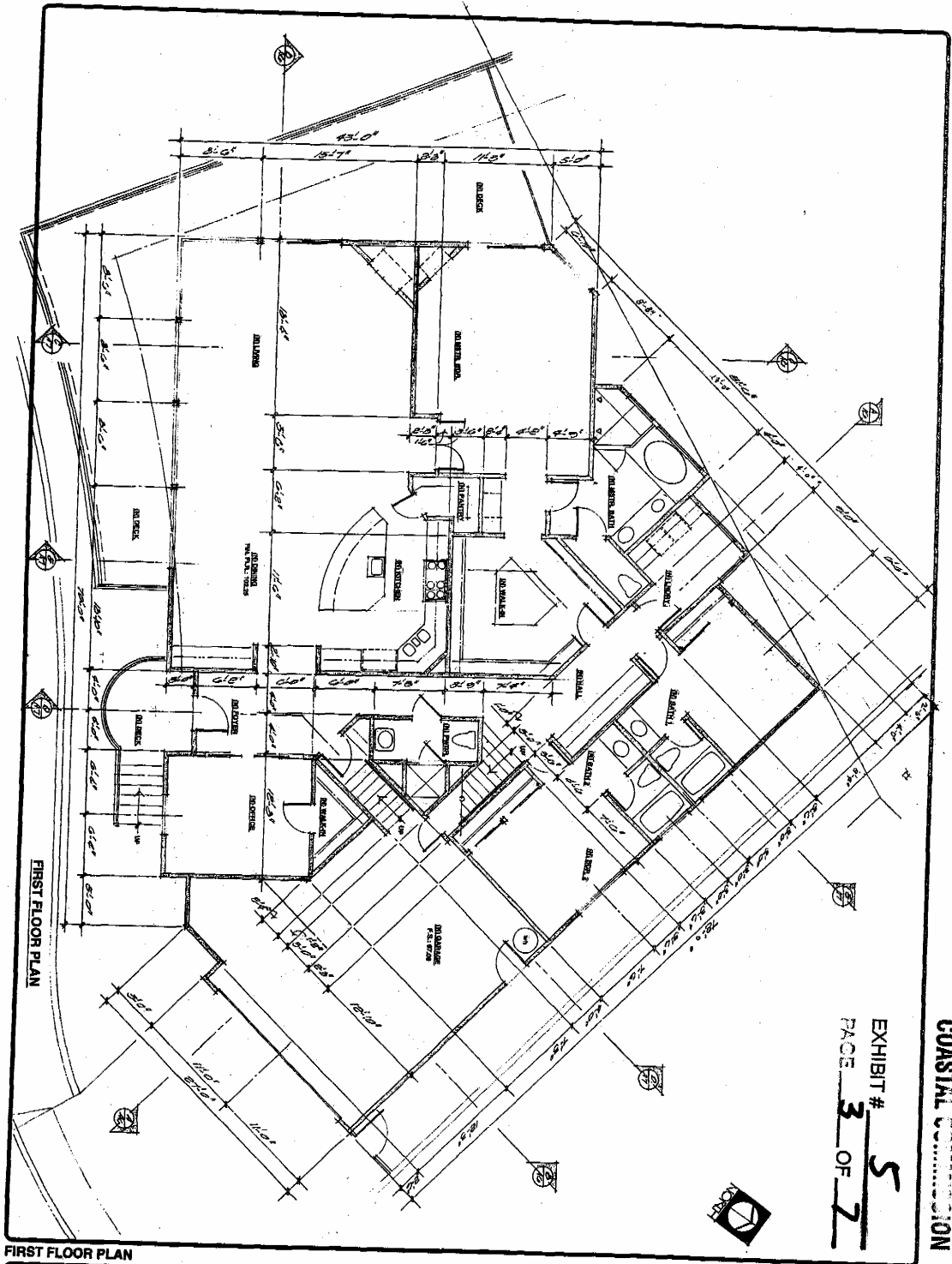
LEGAL DESCRIPTION  
LOT R2, TRACT NO. 2964

**BENCH MARK**  
County of Orange Bench Mark #23 36 ft  
Elevation = 1408 NAVD 83 Bottom

ADDRESS OF PROJECT:  
390 AVENIDA LA COSTA, SAN CLEMENTE, CALIFORNIA

2





### FIRST FLOOR PLAN

ELC4407N
DATE REC'D
DAY
<i>16 Jan 1968</i>
JAN 1968
0018 PT
<b>A1</b>
0018 PT

\_\_\_\_\_

**Architect**  
32432 Alipex St., Suite 1,  
San Juan Capistrano, California 92675  
(949) 493-0836 FAX (949) 493-0865

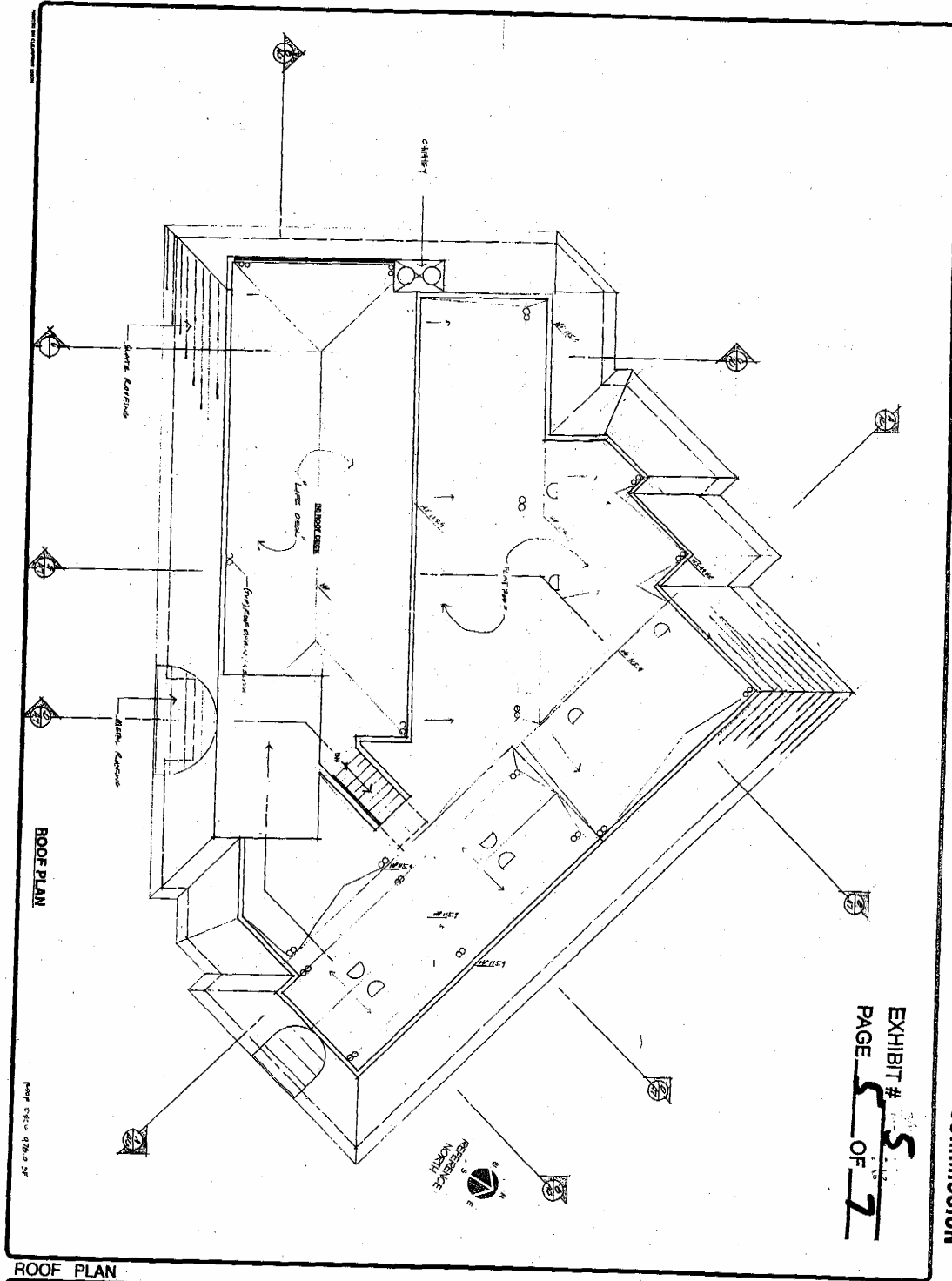
[illegible]

EXHIBIT # 5  
PAGE 9 OF 7

DEATH
CHECKED
DATE
BY <i>W. J. [illegible]</i>
FILE NO.
REMARKS
<b>A2</b>

**Architect**  
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REVISION	BY
Rev 4/20/01	



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EXHIBIT # 5  
PAGE 5 OF 7

ROOF PLAN

A3	DATE	1/1/77
	BY	W. J. Berger

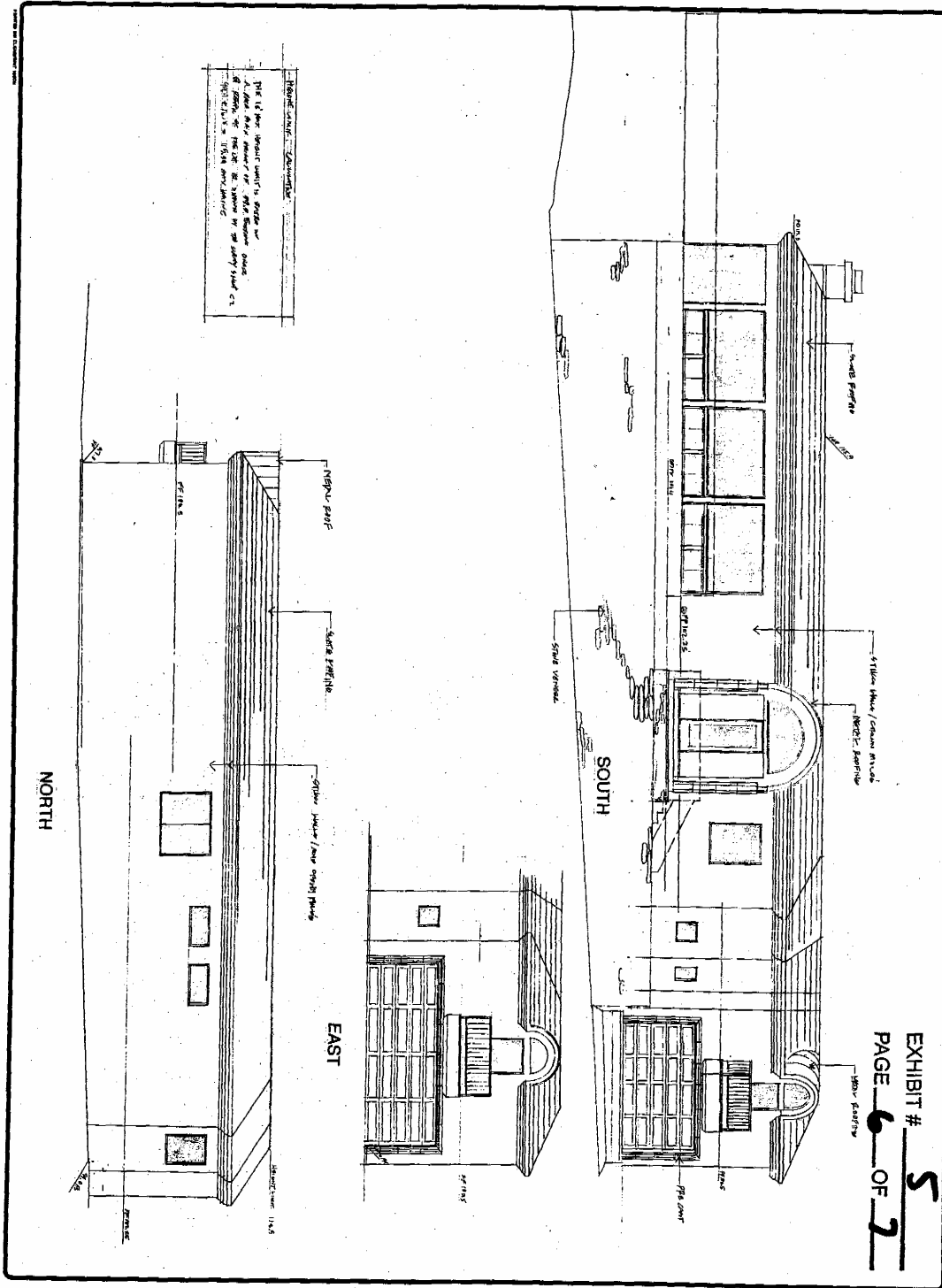
Mr. & Mrs. Eric Jon Berger  
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DATE	1/1/77
BY	W. J. Berger

COASTAL COMMISSION

EXHIBIT # 5  
PAGE 6 OF 7



DATE	5/1/75
BY	W. J. B.
CHECKED BY	
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A4	

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DATE	5/1/75
BY	W. J. B.
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APPROVED BY	

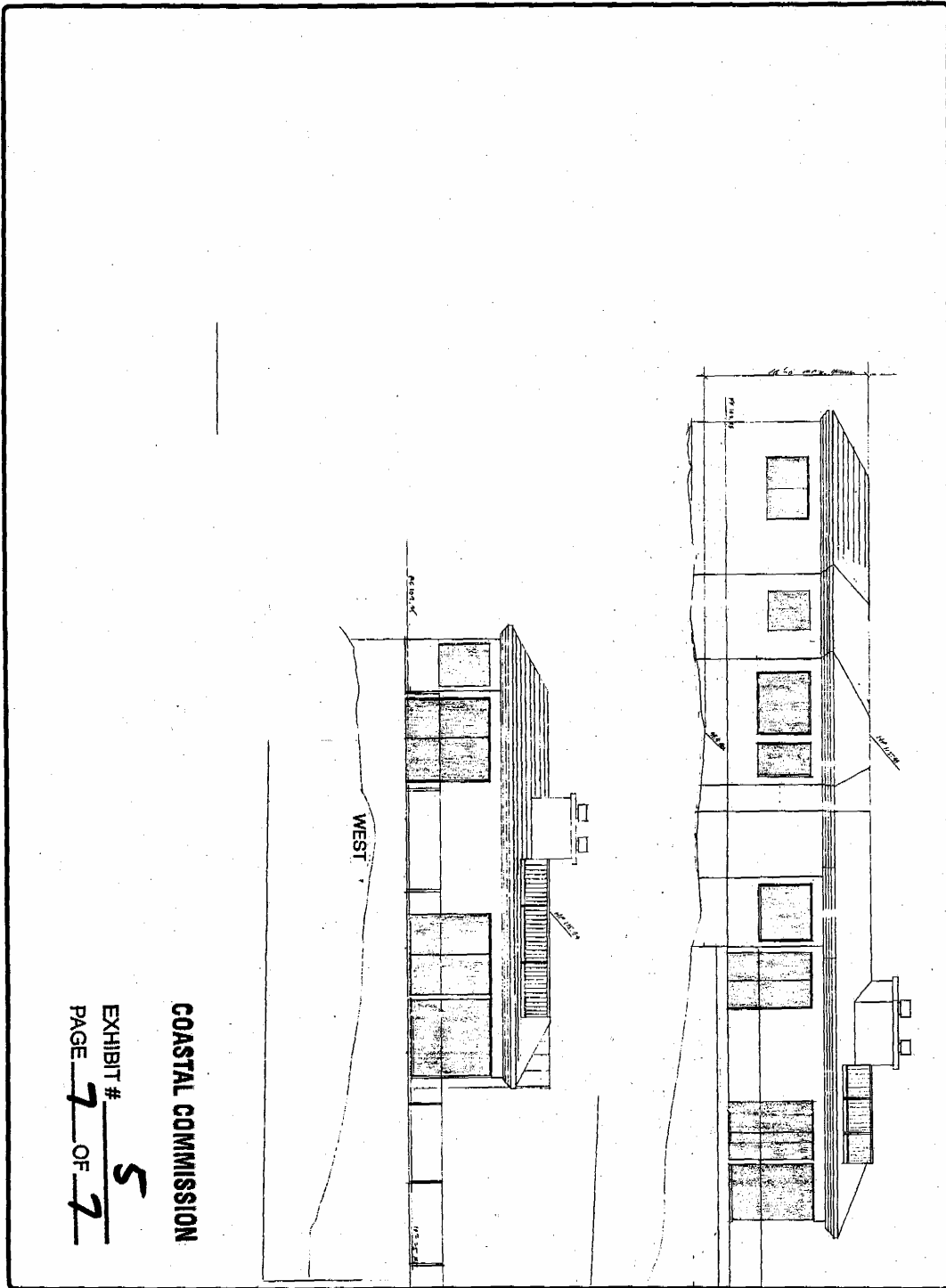


EXHIBIT # 5  
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COASTAL COMMISSION

DATE	10/1/00
BY	Eric Jon Berger
FOR	San Clemente, CA
PROJECT	1000000
FILE	1000000
REVISION	

Mr. & Mrs. Eric Jon Berger 500 Avenida La Costa San Clemente, CA 92673	Architect 22431 Aliphan Rd., Suite 1 San Juan Capistrano, California 92675 (949) 491-1000 FAX (949) 491-1002
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DATE	10/1/00
BY	Eric Jon Berger
FOR	San Clemente, CA
PROJECT	1000000
FILE	1000000
REVISION	

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



Filed: January 7, 2008  
49th Day: February 25, 2008  
180th Day: July 5, 2008  
Staff: Liliana Roman-LB  
Staff Report: March 20, 2008  
Hearing Date: April 9-11, 2008  
Commission Action:

# Item Th3a

## **STAFF REPORT: CONSENT CALENDAR**

**APPLICATION NUMBER:** 5-07-404

**APPLICANT:** Mr. and Mrs. Eric Jon Berger

**AGENT:** Wayne Penny Jr.

**PROJECT LOCATION:** 500 Avenida La Costa, San Clemente,  
Orange County

**PROJECT DESCRIPTION:** Remodel existing single-story single-family residence resulting in a 2-story 4,085 sq. ft. residence, 1,140 sq. ft. ground floor deck, 978 sq. ft. roof deck and a 134 sq. ft. addition to an existing 484 sq. ft. garage on an 11,550 sq. ft. canyon lot. The addition requires a new caisson foundation system. No changes to existing landscaping are proposed.

**LOCAL APPROVALS RECEIVED:** San Clemente Planning Division Approval in Concept dated November 7, 2007.

**SUBSTANTIVE FILE DOCUMENTS:** City of San Clemente Certified Land Use Plan (LUP), *Geotechnical Investigation; Proposed New Single-Family Residential Development at 500 Avenida La Costa, San Clemente, CA* dated May 24, 2007 by Alan J. Jessup, P.E., Consulting Geotechnical Engineer; *Response to City Report Review Checklist for Geotechnical Investigation; Proposed New Single-Family Residential Development at 500 Avenida La Costa, San Clemente, CA* dated August 2, 2007 by Alan J. Jessup, P.E. and Dennis Hannan; and *Transmittal of Revised Seismic Design Criteria for Geotechnical Investigation; Proposed New Single-Family Residential Development at 500 Avenida La Costa, San Clemente, CA* dated March 12, 2008 by Alan J. Jessup, P.E.

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### **SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending **APPROVAL** of the proposed project with three (3) special conditions, which require 1) final plans conforming to geotechnical recommendations; 2) compliance with construction-related best management practices (BMPs); and 3) future improvements come back to the Commission for review. The primary issues associated with this development are geologic hazards, water quality and protection of canyon habitat. A landscaping condition has not been recommended because the applicant is not proposing to disturb existing landscaping or install new landscaping.

**LIST OF EXHIBITS:**

1. Location Map
  2. Assessors Parcel Map
  3. Coastal Canyon Map
  4. Coastal Access Points Map
  5. Project Plans
- 

**MOTION:**                    ***I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.***

**STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION:**

**I. APPROVAL WITH CONDITIONS**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS:

1. Conformance of Design and Construction Plans to Geotechnical Report
  - A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the Geotechnical Investigation; Proposed New Single-Family Residential Development at 500 Avenida La Costa, San Clemente, CA dated May 24, 2007 by Alan J. Jessup, P.E., Consulting Geotechnical Engineer and the Response to City Report Review Checklist for Geotechnical Investigation; Proposed New Single-Family Residential Development at 500 Avenida La Costa, San Clemente, CA dated August 2, 2007 by Alan J. Jessup, P.E. and Dennis Hannan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
  - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
2. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around



drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;

- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

### 3. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-07-404. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-07-404 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

## IV. **FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

### A. **PROJECT LOCATION AND DESCRIPTION**

The proposed project involves a remodel of an existing one-story single family residence resulting in a 4,085 sq. ft. two-story residence on a canyon lot located 500 Avenida La Costa in the City of San Clemente, Orange County (Exhibits 1 & 2). The 11,550 square-foot lot consists of a generally flat pad on the southwestern side of the lot, which slopes down towards Riviera Canyon in the rear yard. Surrounding development consists of low-density single-family residences. The site is designated as Residential Low (7 dwelling units per acre) in the certified Land Use Plan, and the proposed project is consistent with this designation. The nearest public access to the beach is available at the Riviera access point, approximately 250 yards south of the subject site (Exhibit 4).

The applicant proposes an addition of 1,885 sq. ft. livable space to an existing 2,200 sq. ft. residence resulting in a 4,085 sq. ft. livable space, 1,140 sq. ft. ground floor deck, 978 sq. ft. roof deck and a 134 sq. ft. addition to an existing 484 sq. ft. garage. The addition requires a new caisson foundation system. No additional grading or landscaping is proposed. The existing residence is on a level pad on Avenida La Costa and approximately 35 feet above Riviera Canyon. Construction would involve a major ground floor remodel and new second story game room addition and roof deck facing the southwest (street) side. The majority of the proposed addition would be on the eastern

and southeastern sides of the residence (toward the top of canyon and over an existing side yard deck). Non-native vegetation along the southeastern side yard is proposed for removal to accommodate the new side deck addition. Construction of the addition will not result in the loss of any existing native vegetation on the site.

The City's certified LUP (Policy VII.15), to which the Commission may look for guidance, requires new development on coastal canyon lots to be set back as follows:

*"New development shall not encroach into coastal canyons and shall be set back either: a. a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or b. a minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or c. in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures.*

*The development setback shall be established depending on site characteristics."*

The current residence conforms to the canyon setback policies in the certified LUP, as the development is set back a minimum of 30% depth of lot, meets the structural stringline and is also 15 feet from the canyon edge. The proposed addition would encroach closer to the canyon edge by bringing the residence up to approximately 2 feet from the canyon edge at its closest point and approximately 5 feet at its furthest point. The addition would still meet the LUP stringline canyon setback policy, one of three possible applicable canyon setback policies in the LUP. The proposed addition is consistent with the pattern of development in the vicinity as the adjacent lots and those along Avenida La Costa are built out close to the canyon edge.

The applicant submitted a geotechnical study conducted by Alan J. Jessup, P.E. dated May 24, 2007 and a response to the City of San Clemente's review dated August 2, 2007. The geotechnical investigation concludes that the proposed development is considered geotechnically feasible provided the recommendations of the report are incorporated in design, construction and maintenance of the site. The report recommends a caisson foundation to support the addition. The report states that the site is grossly stable with no faults located on the property and that the steeper canyon slopes may be subject to limited surficial instability such as shallow sloughing and slumping; however it should not significantly impact the proposed development.

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. While no rare or endangered species have been reported to exist within the coastal canyon habitat of San Clemente, the City has designated all coastal canyons, including Riviera Canyon, as environmentally sensitive habitat areas, as depicted in Exhibit 3. The coastal canyons act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis.

The canyon adjacent to the subject site is considered degraded due to the presence of both native and non-native plant species. The site is currently covered with non-native shrubs and grasses. No information has been provided to indicate that the site or any portion thereof qualifies as ESHA. The applicant proposes no new landscaping to improve the habitat value of the adjacent canyon. Since no existing landscaping will be disturbed and no new landscaping is proposed, the Commission has not imposed a landscaping condition. Additionally, because the site is located adjacent to a canyon, the proposed plans must be submitted to the Orange County Fire Authority (OCFA) to determine whether their review and approval of a fuel modification or landscaping plan that may impact any existing canyon habitat is required for this development. The applicant has provided a letter from OCFA indicating that their review is not required for the proposed development as it involves a remodel of less than 75% of the existing structure.

During construction, the applicant will be required to implement best management practices (BMPs) designed to minimize erosion and prevent debris from entering the storm drain system leading to the ocean. Permanent drainage control measures are essential in order to decrease irrigation or rain runoff from flowing over the canyon slope. After construction, drainage from roof and surface runoff should be directed away from the canyon slopes and into area drains and piped to existing City storm drain facilities located at the street, per City requirements. As submitted, the preliminary grading plan and erosion control plan prepared by Wayne Penny Jr., Architect shows all roof gutter downspouts connecting to drain lines and surface runoff directed to area drains and piped to directly to the street and existing City storm drains, meeting the City requirements.

**B. DEVELOPMENT (HAZARDOUS AREAS)**

Development adjacent to slopes such as those found on canyons or hillsides is inherently hazardous. Development which may require a protective device in the future can not be allowed due to the adverse impacts such devices have upon public access, and visual resources. To minimize risks to life and property the development has been conditioned to: require an appropriate set-back from the top of the slope, for conformance with a drainage and runoff control plan to minimize percolation of water into the slope and that future improvements must come back to the Commission for review. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

**C. HABITAT, RECREATION AND PARK IMPACTS**

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms to Section 30240(b) of the Coastal Act.

**D. WATER QUALITY**

The proposed work will be occurring in a location where there is a potential for a discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. Furthermore, uncontrolled runoff from the project site and the percolation of water would also affect the structural stability of the canyon. To reduce the potential for construction and post-construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

**E. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

**F. LOCAL COASTAL PROGRAM**

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

**G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

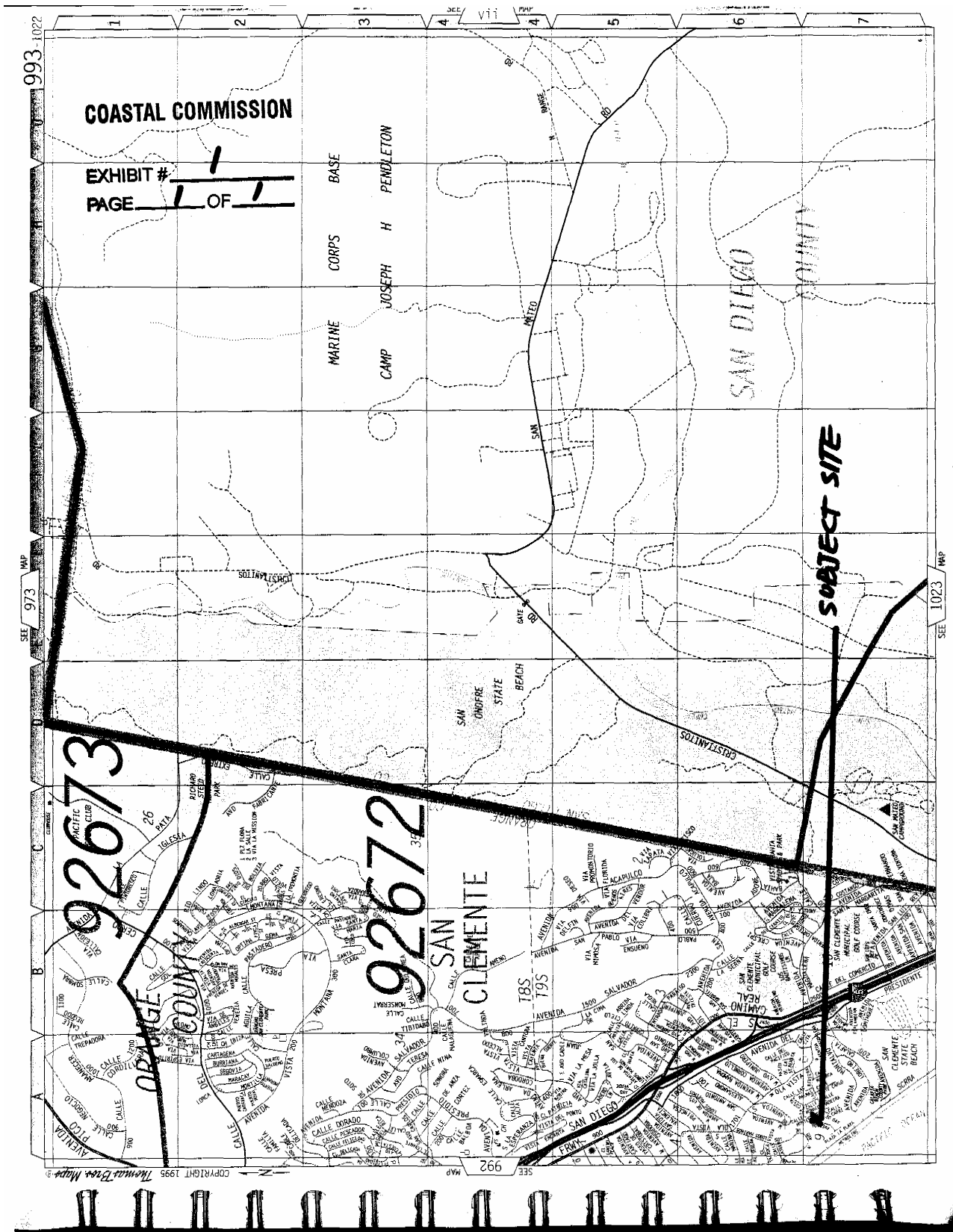
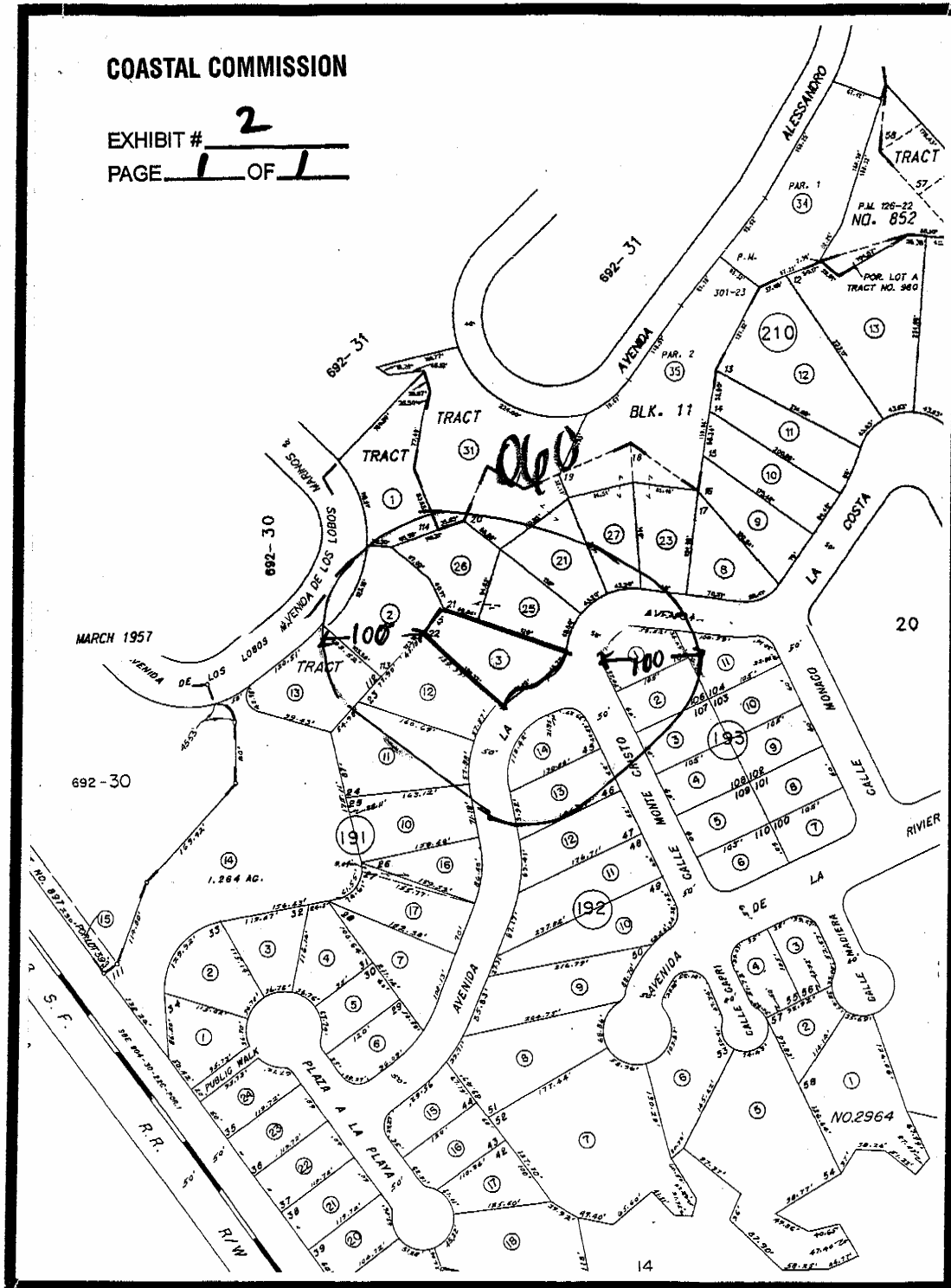
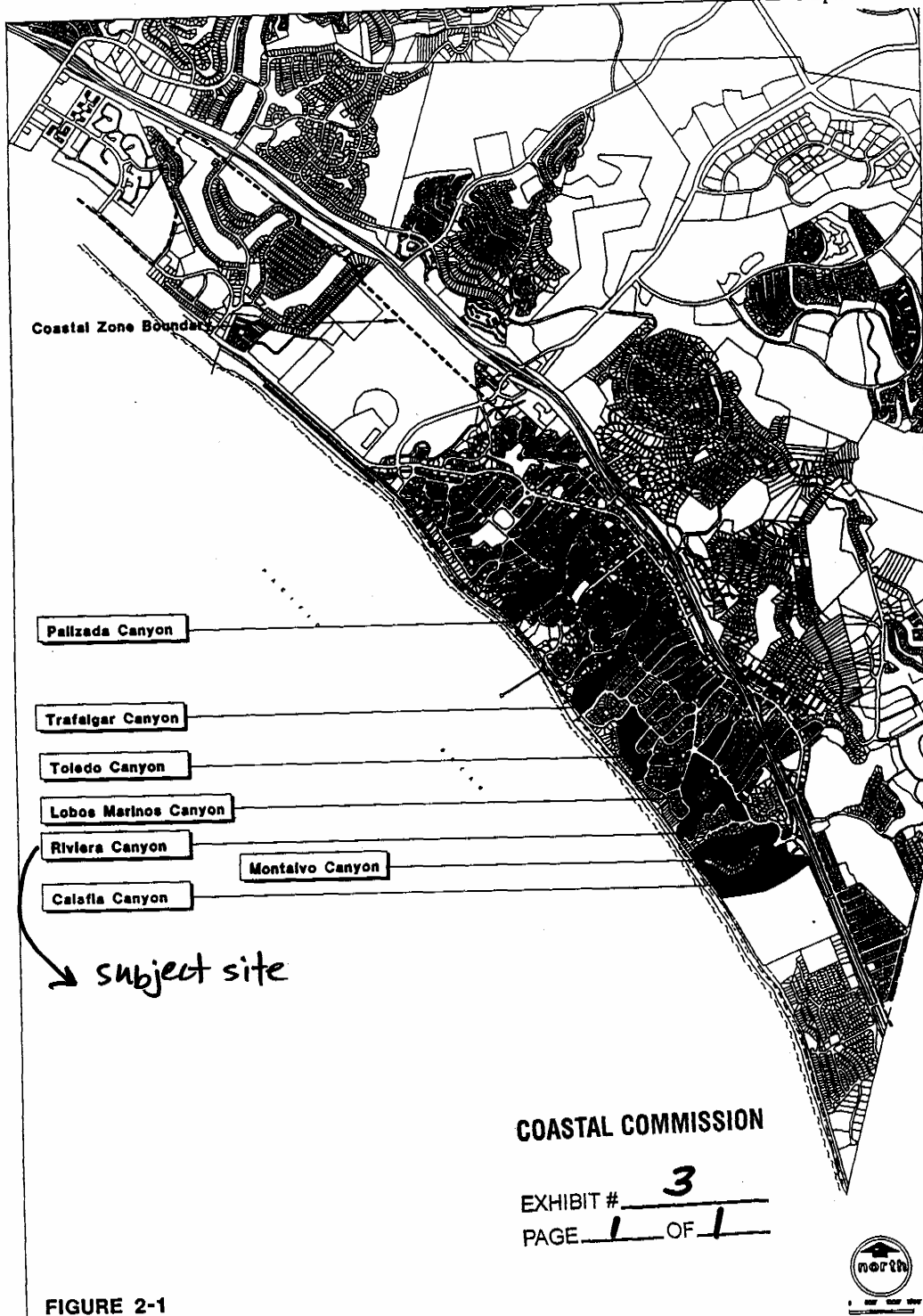


EXHIBIT # 2  
PAGE 1 OF 1



SUSAN W. CASE, INC.  
917 GLENNEYRE ST #7  
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(949) 494-6105



**CITY OF SAN CLEMENTE**  
**COASTAL CANYONS/ ENVIRONMENTALLY SENSITIVE HABITAT AREAS**

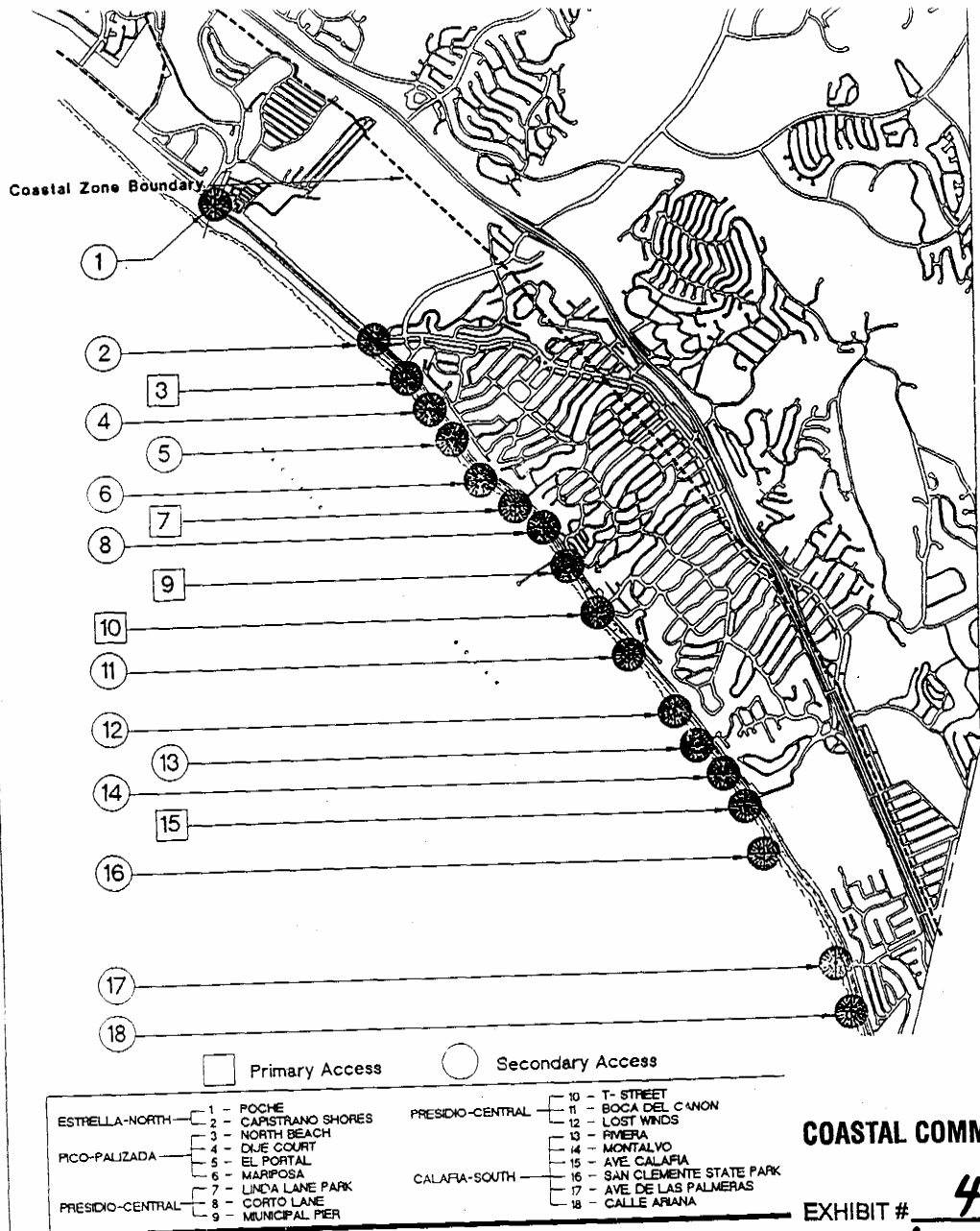


FIGURE 2-5



**CITY OF SAN CLEMENTE**  
**COASTAL ACCESS POINTS**

**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 1 OF 1



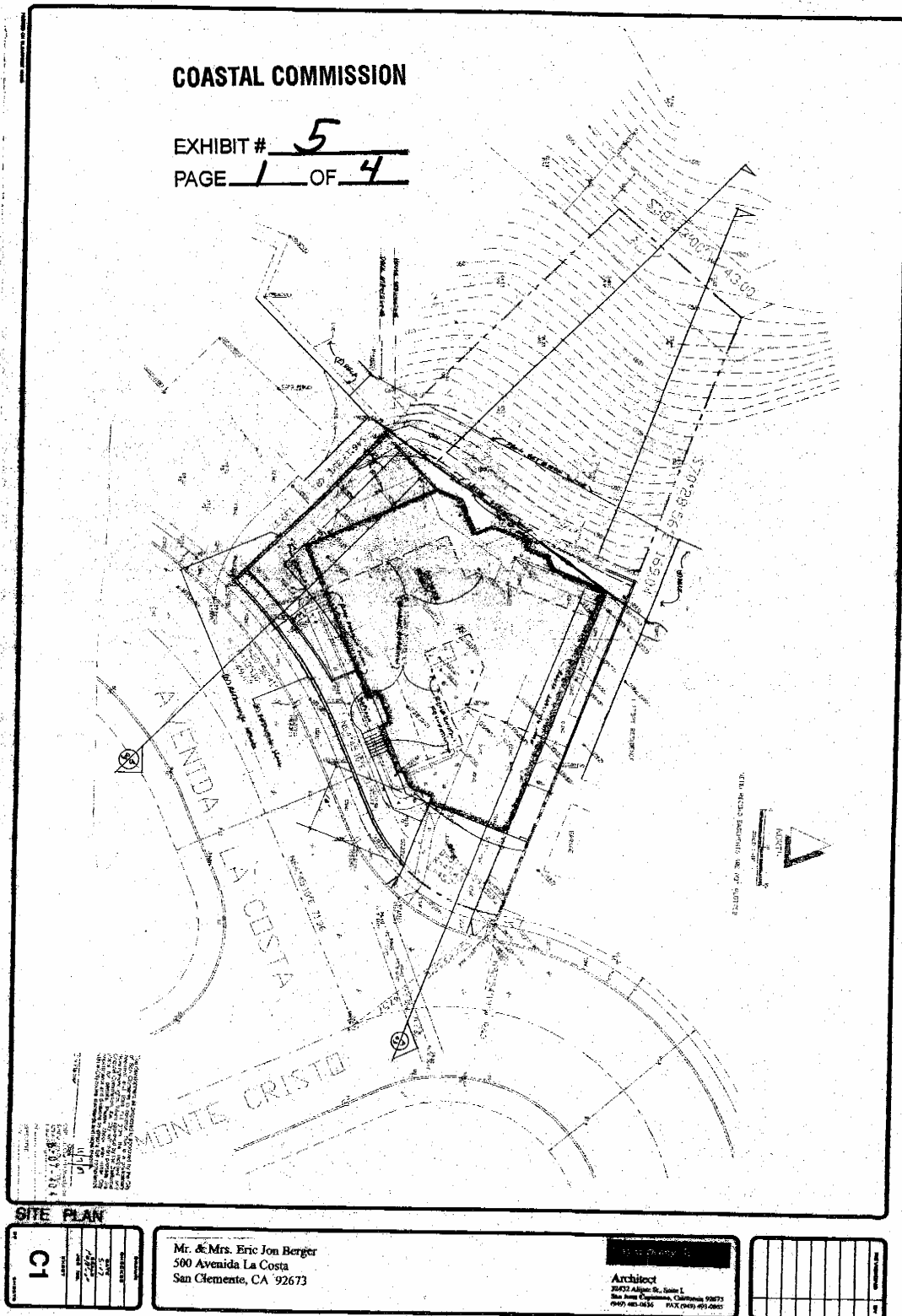


EXHIBIT # 5  
PAGE 2 OF 4

structural  
stringline

**FIRST FLOOR PLAN**

A1

**Architect**  
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